# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

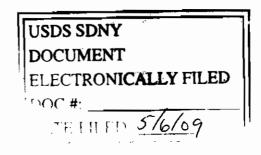
CHARLES WYNN,

Petitioner,

-v-

SUPERINTENDENT FIVE POINTS CORRECTIONAL FACILITY,

Respondent.



No. 08 Civ. 8807 (RJS) (GWG) <u>ORDER</u>

### RICHARD J. SULLIVAN, District Judge:

On March 1, 2008, Petitioner commenced this action in the Northern District of New York.

(No. 08 Civ. 301 (N.D.N.Y.).) By letter dated June 11, 2008, Petitioner sought to withdraw his Petition because he had "sent in [his] claim to the incorrect location." Pursuant to that request, the Petition was transferred to the Southern District of New York, and Petitioner's request to withdraw the Petition was denied as moot. On October 15, 2008, this action was reassigned to the undersigned.

On April 25, 2008, Petitioner commenced a separate action seeking habeas corpus relief based on substantially similar challenges to his current confinement. *Wynn v. Lempke*, No. 08 Civ. 3894 (RJS) (GWG). On April 13, 2009 the Honorable Gabriel G. Gorenstein, Magistrate Judge, issued a Report and Recommendation in that case recommending that the Court deny the Petition. (No. 08 Civ. 3894, Doc. No. 12.) By Order dated May 4, 2009, the Court adopted Judge Gorenstein's recommendation and denied the Petition in its entirety. (No. 08 Civ. 3894, Doc. No. 14.)

Accordingly, for the reasons set forth in Judge Gorenstein's April 13, 2009 Report and

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Recommendation and the Court's May 4, 2009 Order, Petitioner's instant Petition for a writ of habeas corpus relief is DENIED. In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253; *Love v. McCray*, 43 F.3d 192, 195 (2d Cir. 2005). The Clerk of the Court is respectfully directed to close this case.

#### SO ORDERED.

Dated:

May 6, 2009

New York, New York

RIØHARD J. SULLIVAN

WNITED STATES DISTRICT JUDGE

## A copy of this Order has been mailed to:

Charles Wynn 04-A-1964 Five Points Correctional Facility Caller Box 119 Romulus, New York 14541